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TORONTO, SEPTEMBER 27, 1911.

No. 2.

COURT OF APPEAL.

SEPTEMBER 20TH, 1911.

*ROGERS v. NATIONAL DRUG AND CHEMICAL CO.

Landlord and Tenant—Agreement for Lease—Absence of Seal—Possession—"Option" for Further Term—Assignment by Lessee of Interest under Agreement—Right of Assignee to Renewal of Lease—Equitable Jurisdiction of Court.

Appeal by the plaintiff from the judgment of RIDDELL, J., 23 O.L.R. 234, 2 O.W.N. 763, dismissing the plaintiff's action to recover possession of demised premises, and allowing the defendants' counterclaim for a declaration of the defendants' right to a renewal of a lease.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

J. Bicknell, K.C., and M. Lockhart Gordon, for the plaintiff.
E. D. Armour, K.C., for the defendants.

The judgment of the Court was delivered by GARROW, J.A. :—
. . . It is not disputed by Mr. Bicknell, counsel for the plaintiff, that in a lease under seal a covenant to renew would have run with the land. His . . . major contention is, that, the present demise not being under seal, the agreement to renew did not run with the land, and hence is not binding upon the lessor's assignee. This view is, however, in my opinion, quite too narrow, in that it takes no account of the equitable rule to which effect has been, properly in my opinion, given by Riddell, J.

A minor contention was, that the option created only a personal obligation; and, therefore, did not affect the land. I am unable to see the force of this contention. It seems to me to be really included in what I have called the major contention.

*To be reported in the Ontario Law Reports.